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C O N F I D E N T I A L NAIROBI 004631

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DEPT FOR INL/C/CP KOHN, AF/EPS HASTINGS
TREASURY FOR WHYCHE-SHAW

E.O. 12958: DECL: 09/30/2026

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SUBJECT: AG Wako sends Anglo-Leasing Files Back to KACC; Shell Game
Continues

REF: NAIROBI 4321

Classified By: Ambassador Michael E. Ranneberger for reasons 1.4 (B)
and (D).

11. (C) Summary: As predicted in reftel, Kenya Attorney-General Amos Wako sent the files of 12 prominent people recommended for prosecution back to the Kenya Anti-Corruption (KACC), saying they were inadequate to ensure successful prosecutions in court. The latest developments indicate that Anglo-Leasing prosecutions may be unlikely prior to the December 2007 election. End summary.

AG Wako Sends Files Back to KACC

12. (U) On October 2, KACC Director Justice Ringera sent the investigation files of 12 officials implicated in the Anglo-Leasing scandal, including five Ministers, to Attorney-General Amos Wako with recommendations for prosecution. On October 18, Wako sent the files back to the KACC, saying what had been presented to him was not sufficient to ensure successful prosecutions in court. He identified deficiencies that he and the staff of the Department of Public Prosecutions (DPP) found in the files, and asked KACC to carry out further investigations and re-submit the completed files in 30 days. Wako encouraged KACC to consult the DPP Director Tobiko and his staff "to ensure the files are complete when they are re-submitted to me for final determination." Over the next few days, Wako and Ringera publicly exchanged criticisms of the other's claims and defenses of their own, leaving the issue unresolved.

Further Postponing any Prosecution

13. (U) AG Wako's action continues the postponement of prosecution of opposition Orange Democratic Movement (ODM) presidential hopeful Musalia Mudavadi and former Cabinet ministers Chris Murungaru (Transport and Internal Security), David Mwiraria (Finance) and Chris Obure. Other officials whose files were returned include former permanent secretaries Dave Mwangi (Internal Security), Joseph Magari (Finance)

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and Cyrus Kyungu (Transport), a former financial secretary and four former Government officials. All were implicated in five Anglo Leasing-type projects totaling Sh22 billion (\$293 million).

14. (U) Both Ringera and Wako have come under intense criticism for their handling of the Anglo-Leasing investigation and the lack of prosecutions. Ringera was embarrassed by former anti-corruption czar John Githongo's statements about Ringera's reluctance to prosecute, and complaints about KACC's high compensation and poor results. Two weeks ago, a group of lawyers defending a lower-ranking official

noted that Wako had personally signed off on all the Anglo-Leasing deals. MP Mutula Kilonzo and other questioned Wako's ability and standing to prosecute the cases and called for Wako to resign.

Can the GOK Prosecute Anglo-Leasing Perpetrators?

15. (C) The FBI legal attache at post believes KACC will not be able to overcome the difficulties inherent in any historical corruption investigation, such as voluminous documents and reluctant government witnesses. He has advised KACC that addressing current corruption would be a more effective use of its resources than trying to prosecute Anglo-Leasing and other historical cases. He has offered assistance on proactive investigative techniques, such as undercover operations and informants. The Department of Justice Resident Legal Advisor (DOJ/RLA) concurs that historical cases are more labor intensive and difficult, but recommends we should continue to encourage greater coordination and cooperation between the Directorate of Public Prosecutions (DPP) and KACC to ensure that Anglo-Leasing and other cases are thoroughly investigated and prosecutable files are developed. He notes that Post has already committed resources to DPP to build its capacity to prosecute complex corruption and fraud cases. Both approaches would require more political will from the GOK.

Comment

16. (C) As predicted in reftel, Wako, Ringera, and the Kenyan legal system are likely to keep the Anglo-Leasing shell game going until the December 2007 elections. This will allow politicians to keep flinging allegations and denials without ever facing real prosecution. Given President Kibaki's unwillingness to act against the perpetrators revealed in John Githongo's dossiers and recordings, political accountability in grand corruption cases may have to wait until after the December 2007 election. Even if the GOK found the political will to prosecute, the time elapsed since the contracts

were signed and the difficulty of obtaining evidence and testimony to prove guilt in court will make it very difficult for KACC and DPP to obtain and/or sustain any Anglo-Leasing convictions.

Ranneberger